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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CRAIG W. BARNETT, KAREN R. REISNER, and
MARK BRAUNSTEIN,¹
APPELLANTS

Appeal 2007-0794
Application 09/879,825
Technology Center 3600

Decided: August 7, 2008

Before RICHARD TORCZON, SALLY C. MEDLEY and
JAMES T. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

1

2

STATEMENT OF CASE

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The Appellants appeal under 35 U.S.C. § 134 (2002) from a final
rejection of claims 47-63.² We have jurisdiction under 35 U.S.C. § 6 (b)
(2002).

¹ The real parties in interest are Black Diamond CCT Holdings, LLC. and
E-centives, Inc. (App. Br. at 2).

² Claims 1-46 have been canceled. (Amendment, June 12, 2001).

1 The Appellants' claims are directed to a system for distributing and
2 redeeming electronic coupons.

3 Oral argument was conducted in this appeal at 09:00 ET on
4 Wednesday, February 20, 2008 before this panel of the Board. The
5 transcript of that hearing was mailed to the Appellants on March 24, 2008.

6 In rendering our decision, we refer to, *inter alia*, the Appellants' Brief
7 on Appeal of February 10, 2005 ("App. Br."), the Examiner's Answer of
8 June 27, 2005 ("Ans."), the Appellants' Reply Brief of August 29, 2005
9 ("Reply Br."), and the Transcript of the Oral Argument ("Tr.).

10 Claim 47 is representative of the subject matter on appeal and reads as
11 follows:

12 47. A system for distributing and redeeming electronic
13 coupons comprising:
14 a first server system including a computer processor and
15 associated memory, said first server system being connected by
16 a communications channel to a client system, said first server
17 system being adapted for transmitting an electronic coupon to
18 said client system over said communications channel;
19 said client system including a computer processor and
20 associated memory, said client system being adapted for storing
21 said electronic coupon in said memory;
22 a second server system connected to said
23 communications channel, said second server system being
24 adapted to establish a connection with said client system and
25 for detecting said electronic coupon stored on said client
26 system, said second server system further being adapted to
27 redeem said electronic coupon. (App. Br. at 40, Claims
28 Appendix).

29 THE EVIDENCE

30
31 The Examiner relies upon the following as evidence in support of the
32 rejection:

Appeal 2007-0794
Application 09/879,825

1	Nichtberger	US 4,882,675	Nov. 21, 1989
2	Von Kohorn	US 5,227,874	Jul. 13, 1993
3	Valencia	US 5,380,991	Jan. 10, 1995
4	Cameron	US 5,592,378	Jan. 07, 1997
5	Saigh	US 5,734,823	Mar. 31, 1998

THE REJECTIONS

A. Claims 52 and 58 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. (Ans. at 3)

B. Claims 47-51 and 53-60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nichtberger and Valencia. (Id. at 4).

C. Claims 52 and 63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nichtberger, Valencia, and Cameron. (Id. at 8).

D. Claims 47-63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Von Kohorn and Saigh. (Id. at 9).

ISSUES

A. Did the Examiner err in determining that Claims 52 and 58 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention?

B-D. Did the Examiner err in determining that claimed invention would have been obvious to one of ordinary skill in the art in light of the cited prior art of record?

PRINCIPLES OF LAW

Whether the requirement for an adequate written description has been met is a question of fact and depends on the particular facts of the appeal. *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858, 865 (Fed. Cir. 1993).

The originally filed disclosure must have reasonably conveyed to one of ordinary skill in the art that Appellants had possession of the subject matter now in question. 35 U.S.C. § 112, first paragraph. *In re Edwards*, 568 F.2d 1349, 1351-52 (CCPA 1978).

The factual inquiry to determine whether an invention is obvious under 35 U.S.C. § 103 requires consideration of: (1) the scope of and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations, such as unexpected results. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 (1966).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

1 invention was made to a person having ordinary skill in the art to which said
2 subject matter pertains.” *KSR International Co. v. Teleflex Inc.*, 127 S. Ct.
3 1727, 1734 (2007).

4 “If a person of ordinary skill can implement a predictable variation,
5 § 103 likely bars its patentability.” *Id.* at 1740.

6 DISCUSSION

7 A. The Rejection of Claims 52 and 58 under 35 U.S.C. § 112, first 8 paragraph

9 (i) The Rejection

10 Claims 52 and 58 are rejected under 35 U.S.C. § 112, first paragraph,
11 as containing subject matter which was not described in the specification in
12 such a way as to reasonably convey to one skilled in the relevant art that the
13 inventors, at the time the application was filed, had possession of the
14 claimed invention.

15 More specifically, for claim 52 the Examiner has found that a TCI/IP
16 network is not disclosed in the specification, and a TCP/IP network is
17 broader than the Internet. For claim 58, the Examiner has found that the
18 Appellants’ specification does not disclose the step of receiving a request for
19 information from the client prior to step A.

20 (ii) Findings of Fact

21 The record supports the following findings of fact (FF) by a
22 preponderance of the evidence.

23 FF-A1. Claim 52 reads as follows:

24 52. A system according to claim 47 wherein said
25 communications channel includes a TCP/IP based network and
26 said coupon includes a data component.
27

FF-A2 Claim 57 reads as follows:

57. A method of distributing and redeeming an electronic coupon comprising the steps of:
A) establishing a connection over a communications channel between a client and a server;
B) transferring said electronic coupon from said server to said client;
C) establishing a connection over a communications channel between said client and a subsequent server, said subsequent server including one of said server and other servers;
D) said client requesting information from said subsequent server;
E) said subsequent server detecting said electronic coupon on said client;
F) said subsequent server redeeming said electronic coupon as a function of a transaction initiated between said client and said subsequent server.

FF – A3. Claim 58 reads as follows:

58. (Previously Presented) A method of distributing and redeeming an electronic coupon according to claim 57 wherein prior to step A, the server receives a request for information from the client.

FF – A4. The Examiner has found that Claim 52 includes a TCP/IP network. (Ans. at 3).

FF – A5. The Examiner has found that the Appellants' specification does not contain an explicit description of a TCP/IP network. (Id. at 3).

FF – A6. The Examiner has found that a TCP/IP network is different than the Internet. (Id. at 3).

FF – A7. The Examiner has found that TCP/IP is a *protocol*, not a network. (Ans. at 3) (emphasis ours).

FF – A8. The Examiner has found that there are TCP/IP networks that are not part of the Internet. (Ans. at 3).

FF – A9. The Examiner concluded that the TCP/IP network of the claim was not possessed by the inventors at the time the application was filed. (Ans. at 3).

FF-A10. The Examiner found that Claim 58 recites “according to claim 57 wherein prior to step A, the server receives a request for information from the client” (Ans. at 4).

FF-A11. The Examiner found that the specification does not disclose the server receiving a request for information from the client prior to establishing a connection over a communications channel between a client and a server. (Ans. at 4).

(iii) The Argument Presented for Review

Claim 52

The Appellants urge that the Examiner erred in determining that the TCP/IP network of claim 52 was not possessed by the inventors at the time the application was filed.

The Appellants correctly note that the statute does not require “in haec verba” support in the written description test. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991).

The Appellants in support of their position provide a dictionary definition which establishes that TCP/IP is a “communications protocol” (App. Br. at 9). The Appellants urge that the specification “clearly discloses the use of the Internet which is an example of (and clearly supports) the concept of a TCP/IP network. (App. Br. at 9).

We disagree with the Appellants conclusion.

1 While we do agree with the Appellants' proposition that the Internet is
2 a TCP/IP protocol based network (the Examiner concedes this is so), this
3 does not mean that the Appellants had *possession* of all TCP/IP protocol
4 based networks and regarded all TCP/IP protocol based networks as their
5 invention.

6 First, we observe that in order to meet the adequate written
7 description requirement "the description must clearly allow persons of
8 ordinary skill in the art to recognize that [he or she] invented what is
9 claimed." *In re Gosteli*, 872 F.2d 1008, 1012, (Fed. Cir.1989) (citation
10 omitted).

11 Even though the specification describes the Internet (which is an
12 example of a TCP/IP network), the claims as now presented extend to other
13 networks which may also use any TCP/IP protocol. As the Examiner noted,
14 other non-Internet networks exist (FF – A8). Private intranets or vehicle on-
15 board systems all may use a TCP/IP protocol, which is afield of the
16 described "Internet" of the specification.

17 The Appellants do not challenge these facts. Rather, by attorney
18 argument, they essentially equate TCP/IP networks with the Internet because
19 the Internet is an example of a TCP/IP network and therefore they had
20 possession of the invention as now claimed. The originally filed claims
21 recited only a "transmission means" (claims 1, 23), "means for ...
22 transmitting (claim 22) or that data or information is "transmitted" (claims 5,
23 14) (Specification filed June 12, 2001).

24 The Appellants have not shown to us with persuasive evidence that it
25 would have been apparent or clear to one of ordinary skill in the art that the

1 Appellants possessed or contemplated as their invention *all* TCP/IP protocol
2 networks in general upon filing their application.

3 Furthermore, we observe that the Appellants' own specification
4 indicates that TCP/IP protocols were not specifically contemplated as the
5 invention. They were not discussed in the specification in the logical place
6 for them to be - immediately after discussing data links for Internet service
7 providers and the Internet, e.g., at page 14, lines 23 et seq. It is telling,
8 however, that other communications means were - including digital satellite
9 communications and hardwired public service telephone networks (PSTN).

10 Indeed, the Appellants' Specification expressly disclaims any specific
11 transmission means as part of the invention, stating at page 15, line 5 that:

12 Thus, any centrally located computer system which is accessible to
13 the public by any transmission means is contemplated as being within
14 the scope of this invention.
15

16 Consequently, we conclude that the Appellants have not established
17 that the Examiner erred in finding that a TCIIIP network is not the same as
18 the Internet, such that the Appellants were not in possession of the invention
19 as now claimed.

20 Accordingly, we are not persuaded of error as regards the rejection of
21 claim 52.

22 *Claim 58*

23 The Appellants urge that the Examiner erred in determining that that
24 the specification does not disclose the server receiving a request for
25 information from the client prior to establishing a connection over a
26 communications channel between a client and a server.

1 The Appellants note that the specification, page 19, lines 5-14
2 describes where “a user may order a package of electronic coupons from the
3 online service provider (2) via a client (e.g., personal computer (6)). Upon
4 receiving this request from the client, online service provider (2) may
5 transmit the requested information to the personal computer (6).” (App. Br.
6 at 10).

7 This is said to comprise one exemplary illustration of a server
8 receiving a request for information from the client prior to establishing a
9 connection over a communications channel between a client and a server.
10 (App. Br. at 10-11).

11 Claims 57 and 58, written together with bracketing indicating
12 deletions and underlining indicating additions to make analysis of the claim
13 easier, require the following:

14 A method of distributing and redeeming an electronic
15 coupon comprising the steps of:

16 1) a [the] server [receives] receiving a request for
17 information from a [the] client;

18 A) establishing a connection over a communications
19 channel between [a] the client and [a] the server;

20 B) transferring said electronic coupon from said server to
21 said client;

22 C) establishing a connection over a communications
23 channel between said client and a subsequent server, said
24 subsequent server including one of said server and other
25 servers;

26 D) said client requesting information from said
27 subsequent server;

28 E) said subsequent server detecting said electronic
29 coupon on said client;

30 F) said subsequent server redeeming said electronic
31 coupon as a function of a transaction initiated between said
32 client and said subsequent server.

There are seven discrete steps in this claim; only the first (and its timing with regard to the second) is in question with regard to this rejection.

We now turn to the Appellants' argument.

Page 19, lines 4-14, of the specification to which we are pointed by the Appellants recites the following:

After joining the electronic coupon service, the user can order a package of electronic coupons from the online service provider 2 by selecting the download coupon function button 64. When this button is selected, commands are generated and transmitted via the data communications interface 20, through the data link 4, and up to the coupon package file 40 resident at the online service provider 2. The requested coupon data package and associated advertising materials are transmitted by the online service provider 2 to the personal computer 6, where it is stored in the downloaded coupon data file 30a in the coupon database 30.

While it seems correct that selecting the download coupon button 64³ would act to send a request to the server, we cannot agree with the Appellants' contention that the Examiner erred in determining that this step is not prior to "establishing a connection over a communications channel between a client and a server" as required by claim 58. (Ans. at 10)

In proceedings before the U.S. Patent and Trademark Office, unpatented claims must be interpreted by giving words their broadest reasonable meanings in their ordinary usage, taking into account the written description found in the specification. *In re Morris*, 127 F.3d 1048, 1054, (Fed. Cir. 1997).

³ Figure 4(A) appears to have a "Download Coupons" button, although it is not labeled with an appropriate reference numeral. We assume this to be the button referred to by the Appellants.

In this instance “establishing a connection over a communications channel between a client and a server” is reasonably broadly read to encompass the Internet connection existing between the client and server prior to sending an initial request for information. The client, if connected to the Internet, is also connected to the server, if the server is also connected to the Internet. The claim does not read “active ongoing two-way communications,” it simply says “establishing a connection.” The client and server are connected by the Internet. The specification provides no other explicit basis for reasonably interpreting the claim.

We therefore are unpersuaded by this allegation of error as it pertains to claim 58.

Accordingly, we shall affirm the rejection of claims 52 and 58 under 35 U.S.C. §112, first paragraph.

B. The Rejection of Claims 47-51 and 53-60 under 35 U.S.C. §103(a)

(i) The Rejection

Claims 47-51 and 53-60 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Nichtberger and Valencia. (Ans. at 4).

More specifically, the Examiner has found that Nichtberger describes all of the elements of the claim except a computer processor and associated memory. (Ans. at 5). The Examiner has additionally found that Valencia is related to Nichtberger and describes a client system including a computer processor and associated memory. (Id.).

(ii) Findings of Fact

FF – B01. The Examiner has found that Nichtberger describes a system for distributing and redeeming electronic coupons. (Ans. at 4).

1 FF - B02. The Examiner has found that Nichtberger describes a first
2 server system including a computer processor and associated memory, the
3 first server system being connected by a communications channel to a client
4 system, the first server system being adapted for transmitting an electronic
5 coupon to the client system over the communications channel. (Ans. at 4)
6 (Nichtberger, 5:1-16; 11:40-50; and 30:1-6).

7 FF – B03. The Examiner has found that Nichtberger describes (30:1-
8 6) that the client system includes an associated memory and is adapted for
9 storing the coupon in memory. (Ans. at 4).

10 FF – B04. The Examiner has found that Nichtberger describes (30:1-
11 6) a second server system connected to the communications channel, the
12 second server system being adapted to establish a connection with the client
13 system and for detecting the electronic coupon stored on the client system,
14 and being adapted to redeem the electronic coupon. (Ans. at 4).

15 FF – B05. The Examiner has found that Nichtberger describes (10:65
16 – 11:5) that the card for storing information is special. (Ans. at 4).

17 FF – B06. The Examiner has found that a difference between
18 claim 47 and Nichtberger is that Nichtberger does not expressly disclose that
19 the client system includes a computer processor and associated memory
20 (Ans. at 4).

21 FF – B07. The Examiner has found that Valencia describes (3:13-20
22 and 3:44-47) a client system including a computer processor and associated
23 memory for storing and processing information related to electronic
24 coupons. (Ans. at 5)

1 FF – B08. The Examiner has found that Valencia describes (2:15-35)
2 that its features are directly related to the invention of Nichtberger. (Ans.
3 at 5).

4 FF – B09. The Examiner concluded that it would have been obvious
5 to combine Nichtberger and Valencia to provide the improvements of the
6 broader functionality of a smart card over the special card. (Ans. at 5).

7 FF – B10. Nichtberger describes the distribution, clearing, and
8 redemption of coupons electronically. (1:6-11).

9 FF – B11. Nichtberger describes an operations center cooperating
10 with local stations for distribution of electronic coupons. (4:34-44).

11 FF – B12. Nichtberger describes that the local stations include a UPC
12 scanning checkout system. (5:1-2)

13 FF – B13. Nichtberger describes that the local stations include a
14 coupon distribution and redemption (CDR) unit. (5:1-3).

15 FF – B14. Nichtberger describes information flow between the
16 operations center and the local units. (4:66-68).

17 FF – B15. Nichtberger describes that the local CDR unit presents
18 available coupons to a user after the user inserts a card. (5:4-6).

19 FF – B16. Nichtberger describes that the user can select coupons
20 (5:10).

21 FF – B17. Nichtberger describes that information may be recorded on
22 the card using a magnetic stripe. (5:9; see especially 11:41-50).

23 FF – B18. Nichtberger describes that a user may cause the card to be
24 read at checkout to redeem coupons for corresponding purchases. (5:17-25).

25 FF – B19. Nichtberger describes transmitting the purchase and
26 coupon information to the central processing unit. (5:26-28).

FF - B20. Valencia describes a smart card to be used for redemption of electronic coupons. (1:7-9).

FF - B21. Valencia describes that the smart card includes a processor and memory. (4:27-36).

FF- B22. The Examiner has found that Nichtberger discloses that there are multiple server systems that interact with the client system. (Ans. at 5).

FF - B23. Nichtberger describes a central processing unit (16) located at an operations center. (Fig. 1; 4:42:56).

FF - B24. The Examiner has found that Nichtberger describes a third server system for communicating with the second server system and for authorizing redemption of the electronic coupon. (Ans. at 6; Nichtberger Fig. 4. and 17:49-60).

(iii) The Arguments Presented for Review

The Appellants urge error in that (1) the Examiner is misinterpreting the term “client system” in the claims; (2) there is no teaching, suggestion, or motivation to make the combination of Nichtberger and Valencia; and (3) the combination of Nichtberger and Valencia fails to teach or suggest all of the claim limitations. (App. Br. at 19).

“Client System”

We turn first to interpretation of the language of claim 47. The term “client system” is undefined in the claim, but requires including a computer processor and associated memory, and being adapted to store an electronic coupon in that memory.

We then look to the specification for further enlightenment, but we have not found, nor are we pointed to by counsel for the Appellants, any meaningful definition of the term “client system” in the specification.

The Appellants provide what is termed an “*exemplary* illustration” (App. Br. at 13) (emphasis in original) of a definition⁴ of “client” which states as follows:

CLIENT

The client part of a client-server architecture. Typically, a client is an application that runs on a personal computer or workstation and relies on a server to perform some operations. For example, an e-mail client is an application that enables you to send and receive email. (App. Br. at 13).

The Appellants then provide a definition of “smart card” and urge that a smart card is not a client system. (App. Br. at 15).

This argument is not persuasive.

First, the Appellants do not attempt to explain the limits of the term “client system” as used in the claim. A client system can literally be almost anything which is a system, so long as it depends on a server for service. We see nothing in the claim language, and no persuasive argument has been made, based upon credible evidence, which would lead us to consider the claim to exclude handheld devices, microchips, smart cards, magnetic cards and readers, radio frequency identification chips, or other electronic devices from the definition of client systems.

There is likewise no persuasive evidence in the specification, and the Appellants have made no convincing argument referencing any part of the

⁴ Said to be from P.E. Margolis, Random House Webster’s Computer & Internet Dictionary (no page provided) (3d ed. 1999).

1 specification which teaches the claim terms should be defined as limited to
2 any specific type of device.

3 Finally, to the extent that the arguments might be construed as an
4 attempt to interpret the claims as limited to a particular device, the
5 Appellants are pointing, in their own words, to an “exemplary” definition.
6 Presumably, then, this is only an example of what the claim might cover,
7 and not limiting. Furthermore, this “exemplary” illustration uses the non-
8 limiting word “typically” in describing an example.

9 Accordingly, we are not persuaded by the argument that claim 47, and
10 dependent claims 48-51 and 53-56, exclude a “smart card” from being a
11 client system as used in the claim.

12 *“Teaching, Suggestion, or Motivation”*

13 The Appellants urge that the rejection of independent claim 47 is
14 “improper as there exists no teaching, suggestion, or motivation to modify
15 Nichtberger to include the teachings of Valencia” (App. Br. at 14).

16 First, we observe that teaching, suggestion, or motivation is not a
17 strict requirement, although a reason for making the combination must be
18 given. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

19 However, we note that in this instance there does exist a suggestion
20 and motivation to make the combination as proposed by the Examiner. The
21 Examiner expressly noted that Valencia describes how it can improve upon
22 the field of Nichtberger (FF-B08; Valencia 2:15-35). This is a clear
23 teaching, suggestion, and motivation to improve the regular cards of
24 Nichtberger by substituting the smart cards of Valencia, which contain a
25 processor and memory.

1 The Appellants urge, without elaboration, that “the Examiner alleges
2 without support that it would be obvious to substitute the smart card of
3 Valencia for the special card of Nichtberger” and “[t]here is no teaching,
4 suggestion, or motivation to support this series of modifications. . .” (App.
5 Br. at 14). This position taken by the Appellants is simply incorrect and the
6 allegation of error is without any evidentiary foundation.

7 Consequently, this argument is without merit.

8 *Failure to Teach all the Elements*

9 The Appellants next urge that Nichtberger and Valencia fail to teach
10 (i) a client system; (ii) a second server system connected to the same
11 communications channel as the first server system, and (iii) the first server
12 system being adapted for transmitting an electronic coupon to said client
13 system over said communications channel, and the client system being
14 adapted for storing said electronic coupon in said memory. (App. Br. at 15).

15 *(i) Client System/Smart Card*

16 The Appellants again urge that the Examiner’s reading of a “smart
17 card” as a “client system” is inconsistent with the meaning given those terms
18 by one of ordinary skill in the art. As noted above, the Appellants have
19 failed to show error or unreasonableness in the Examiner’s interpreting
20 claim 47 as encompassing a smart card. Consequently, this repeated
21 argument again fails.

22 *(ii) Second Server System Connected to*

23 *“Said” Communications Channel*

24 The Appellants next urge that the combination fails to teach a second
25 server system connected to the same communications system as the first
26 server system. (Reply Br. at 14).

1 As before, the claim language needs to be interpreted.

2 47. A system for distributing and redeeming electronic
3 coupons comprising:

4 a first server system including a computer processor and
5 associated memory, said first server system being connected
6 by a communications channel to a client system, said first
7 server system being adapted for transmitting an electronic
8 coupon to said client system over said communications
9 channel;

10 said client system including a computer processor and
11 associated memory, said client system being adapted for storing
12 said electronic coupon in said memory;

13 a second server system connected to said communications
14 channel, said second server system being adapted to establish a
15 connection with said client system and for detecting said electronic
16 coupon stored on said client system, said second server system further
17 being adapted to redeem said electronic coupon. (Bolding added).
18 (App. Br. at 40, Claims Appendix).

19
20 The type or scope of the term “communications channel” is not
21 limited or defined in the claim. The Appellants have provided no persuasive
22 evidentiary insight or useful argument as to the scope to be afforded the
23 claim in this regard.

24 We turn to the specification to glean any knowledge as to what is the
25 proper scope of the term “communications channel.” This term does not
26 appear in the specification, so far as we are able to tell. We find the term
27 “communications data link” (Specification, 14:26-28) defined as a PSTN or
28 ISP. We find the term “digital satellite communications links”
29 (Specification 15:3). We also find that the specification details “any
30 centrally located computer system which is accessible to the public by any
31 transmission means . . .” (Specification, 15:6-8) as being contemplated
32 within the scope of the invention.

1 We find the term “data link” (Specification, 15:28) which is
2 undefined, but appears to include access by “any remote personal
3 computer 6 having a data communications interface 20 such as a modem. . .”
4 (Specification at 15:28-30). Other, similar terms appear in the specification
5 (“data communications interface” (Id. at 20:9-10) which can be a “satellite
6 communications apparatus” and “wireless data link” (Id. at 32:2). Online
7 service providers (Id. at 15:27) and the Internet (Id. at 14:30) are also
8 discussed.

9 We do note that claim 51 broadly recites that the channel “includes a
10 network.” (App. Br. at 41).

11 We conclude that the specification provides no significant guidance
12 for interpreting the term “communications channel” and as a consequence
13 the term may be read to include any means of communication between the
14 various elements of the claim, including the Internet, hardwired or wireless
15 communications, or portions of each in the channel.

16 With this claim analysis in place, we turn to the Appellants’
17 contention.

18 The Appellants urge that the Examiner has erred in considering the
19 special card of Nichtberger communicating with the coupon database as
20 being the same communications channel as the checkout system. (App. Br.
21 at 17).

22 We are unpersuaded by this contention of error. First, we observe that
23 the combined system of Valencia and Nichtberger provides a smart card and
24 reader for loading up electronic coupons, and a reader at the checkout
25 counter. Each is connected to a local processing unit which is in turn

connected to the central processor. (Valencia, Abstract, Fig. 4; Nichtberger, Abstract).

The claimed “first server system including a computer processor and associated memory, said first server system being connected by a communications channel to a client system, said first server system being adapted for transmitting an electronic coupon to said client system over said communications channel” reads on the local CDR system transmitting a coupon to the smart card of Valencia or special card of Nichtberger.

The claimed “client system including a computer processor and associated memory, said client system being adapted for storing said electronic coupon in said memory” of the claim reads on the smart card of Valencia which has onboard processing and memory for storing coupons.

Finally, the claimed second server system connected to said communications channel, said second server system being adapted to establish a connection with said client system and for detecting said electronic coupon stored on said client system, said second server system further being adapted to redeem said electronic coupon reads on the smart card being presented for redemption at the checkout reader of Nichtberger.

The Appellants’ argument centers around the concept that the smart or special card communicating with the CRD on the one hand, and the checkout scanner on the other hand, cannot be the “same communications channel” because they are wired on different circuits. (App. Br. 17). If the Appellants’ claim was more specifically limited, that argument might have some currency.

However, in the present instance, neither Nichtberger nor the instant claims are restricted to any particular mode or route of connection. A

communications channel can be highly variable (e.g. the Internet can send information over a wide variety of routes to wind up in the same place).

As discussed at Oral Argument:

JUDGE MEDLEY: So a communications channel, it is not really from point A to point B on a single wire. It can be considered any of a number of connections inter-connected.

MR. GATTO: It could be, correct. But that still has to be the same channel. For purposes of the claim, it still has to be the same channel. Okay, so even if you interpret the Internet that broadly, which is probably a fair reading all right, in [Nichtberger] it is clear the communication channels by which you store information and read it are not the same, they are not part of the same network. The examiner ignores that part of the claim. (Tr. at 19:1-10).

Nichtberger Figure 1 is reproduced below:

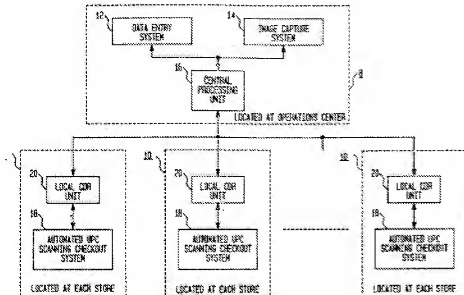


Figure 1 depicts a block diagram schematic of the system for electronic distribution of coupons of Nichtberger.

It is apparent from Figure 1 that the card (not shown) is in communication with the local CDR unit (at each store) and an automated UPC scanning checkout station. The communications channel of the instant

1 claim 47, interpreted reasonably broadly, also reads upon the connection of
2 the central processing unit with each store, and with each local CDR unit,
3 and each UPC scanning checkout system, which are connected with each
4 other.

5 When the smart card or special card is connected to the CDR (a local
6 server for the smart card) or UPC (another local server for the smart card), it
7 is part of that overall communications channel. The Appellants' claim does
8 not differentiate.

9 Appellants' counsel strenuously argues that the card communicating
10 with the CDR unit and the UPC unit is not part of the same channel, but no
11 persuasive evidence in support of this position is provided. On one hand the
12 Appellants want (for purposes of avoiding the prior art) to interpret claim 47
13 as requiring exactly the same communications path, but on the other hand
14 the specification discusses any means, including the multipath Internet, as
15 being contemplated by the invention. We find the specification to be the
16 more credible source of evidence as to how the claims should be construed.

17 Accordingly, we are unpersuaded by this contention of error.

18 (iii) *First server system being adapted for transmitting an*
19 *electronic coupon to said client system over said*
20 *communications channel, and the client system being*
21 *adapted for storing said electronic coupon in said*
22 *memory.*
23

24 The Appellants argue that:

25 While the Examiner may attempt to look to the local CDR Unit, the
26 local checkout system controller, and the communications link of
27 Nichtberger as allegedly reading on Appellants' claimed first server
28 system, second server system, and communications channel,
29 respectively, such an interpretation is also flawed. In particular,

1 because coupon selection information appears to be transmitted from
2 the local CDR Unit to the local processor in this embodiment of
3 Nichtberger, and because the special card appears to be used primarily
4 for user identification purposes in this embodiment, the claim feature
5 of transmitting an electronic coupon to the client system (which the
6 Examiner has defined as Nichtberger's special card) is not met. (App.
7 Br. at 18).

8
9 First, this argument is unpersuasive in that it overlooks that the
10 rejection is over the combination of Nichtberger and Valencia. Valencia
11 includes the smart card which the Examiner found to be the client system.
12 The Appellants have not shown with persuasive argument or sufficient
13 evidence that this finding was in error.

14 Second, this argument is unpersuasive in that transmission of
15 information to the local processor from the CDR unit is simply one
16 embodiment of the overall combination. The references as a whole, when
17 considered together, teach one of ordinary skill in the art that coupons can be
18 uploaded to a smart card. Consequently, we see no error in the Examiner's
19 determination that the subject matter of claim 47, when considered in view
20 of the prior art as a whole, would have been obvious to one of ordinary skill
21 in the art.

22 We therefore are unpersuaded of error in this regard.

23 *Independent Claim 57 and Dependent Claims 58-60*

24 The Appellants urge that independent claim 57 and dependent
25 claims 58-60 are patentable because "as discussed in detail above with
26 regard to claim 47, the Examiner's interpretation of 'client' is inconsistent
27 with the meaning given to the term by those of ordinary skill in the art."
28 (App. Br. at 19).

1 The Appellants further urge that “the server and subsequent server are
2 not connected to the same communications channel, as described in detail
3 above regarding claim 47.” (App. Br. at 19).

4 Finally, the Appellants again yet further argue that “to the extent that
5 the Examiner relies on alternative embodiments of Nichtberger
6 simultaneously, as described above with regard to claim 47, the alternative
7 embodiment relied upon does not appear to disclose transferring an
8 electronic coupon from the server to the client.” (App. Br. at 19).

9 As we have already determined this argument to be without merit, we
10 are unpersuaded of error.

11 *Dependent Claims 48-51, 53-56, and 58-60*

12 (i) Claim 48

13 The Appellants argue that claim 48 “further recites the claim
14 element(s) of “. . . a third server system connected to said communications
15 channel, said third server system being adapted for communicating with
16 said second server system and for authorizing the redemption of said
17 electronic coupon.” (App. Br. at 20). In particular, the Appellants argue that
18 Nichtberger does not describe a third server system connected to the
19 communications channel. (App. Br. at 20).

20 First, we observe that this argument relies upon the Appellants’
21 erroneous interpretation of the communications channel as being narrowly
22 construed as the hardwire path, e.g. the exact data bus or electrical
23 component within the CDR. (App. Br. at 20, last line). We disagree with
24 that interpretation. The Examiner has correctly interpreted the claim using a
25 broader reasonable interpretation to include the network and servers attached

1 to the network. The Examiner determined that there are multiple servers,
2 and, e.g. the central processing unit (FF-B19, FF-B20), is the third server.

3 Accordingly, we find no error with the Examiner's conclusion of
4 obviousness as regards claim 48 over the combination of Nichtberger and
5 Valencia.

6 (ii) Claim 49

7 The Appellants argue that claim 49 recites "*wherein said second*
8 *server system is adapted to redeem said coupon as a function of a*
9 *transaction initiated between said client system and said second server*
10 *system.*" The Appellants conclude that, based on the Examiner's
11 interpretation of Nichtberger, Nichtberger does not disclose this element.
12 (App. Br. at 21).

13 This argument is erroneous. First, the test for obviousness is not
14 whether one reference of the combination of references discloses an element,
15 but rather whether the claimed invention would have been obvious to one of
16 ordinary skill in the art at the time the invention was made in light of the
17 knowledge of that person combined with the references. Second, the
18 Examiner found that Nichtberger describes a client system transmitting
19 coupons at one location by a first server system and redeeming coupons at a
20 different location by a second or different server system. (Ans. at 6). We
21 have already determined that the Appellants have failed to show this
22 interpretation as erroneous.

23 As a consequence, we affirm this rejection as it applies to claim 49.

24 (iii) Claim 50

25 The Appellants argue that claim 50 recites the claim element of
26 "*wherein said second server system is adapted to redeem said coupon as a*

1 *function of a transaction by modifying a transaction initiated between said*
2 *client system and said second server system.”* The Appellants contend that
3 “[a]pplying the Examiner’s interpretation of what constitutes the client
4 system, first server system, communications channel, and second server
5 system in Nichtberger consistently, the figure relied upon by the Examiner
6 in Nichtberger (for claim 50) does not appear to disclose this element of
7 claim 50.” (App. Br. at 21).

8 We note that Figure 4, illustrates a consumer at a checkout counter
9 using a card (2). In the discussion at column 6, lines 22-50 of Figure 3,
10 Nichtberger describes modifying the transaction by deducting a savings
11 value. Accordingly, we find no error in the Examiner’s conclusion that the
12 second server system (the scanner) is adapted to modify the transaction.

13 Accordingly, we affirm this rejection as it pertains to claim 50.

14 (iii) Claim 51

15 The Appellants argue that claim 51 recites the claim element of
16 “*wherein said communications channel includes a network.*” The
17 Appellants contend that “[a]pplying the examiner’s interpretation of what
18 constitutes the communications channel in Nichtberger consistently, the
19 figure relied upon by the Examiner in Nichtberger (for claim 51) do not
20 appear to disclose this element of claim 51.” (App. Br. at 21).

21 We observe that this argument is, in essence, arguing that it would
22 have been unobvious to one of ordinary skill in the art at the time the
23 invention was made to use a network as the communications channel. We
24 find it disturbing that such an argument would be made, when networks
25 were undoubtedly known as useful communications channels at the time the
26 invention was made.

Furthermore, the Examiner found that Nichtberger describes a network at Fig. 1, and 15:25-30; 12:8-15. (Ans. at 7). Nichtberger illustrates a network as a communications channel at Fig. 1 and throughout the specification. Accordingly, the Appellants have not shown error in the Examiner's conclusion that the subject matter of claim 51 would have been obvious.

We therefore affirm this rejection as it applies to claim 51.

Claim 53

The Appellants argue that claim 53 recites "*wherein said first server system and said second server system are the same server system.*" The Appellants then contend that Nichtberger does not disclose this element. (App. Br. at 22). We note that this contention is not separate argument as to why claim 53 is patentable. (37 CFR §41.37(c)(vii).

Nonetheless, we observe that the Examiner found that Nichtberger described the first and second server systems being the same system (Ans. at 7 citing Nichtberger 5:15). We observe that Nichtberger describes the automated CDR and scanning stations may be a local station. Id. at 5:15. Accordingly, we find no error in the Examiner's determination that it would have been obvious to combine the first and second server systems into the same server system.

This rejection is affirmed as it relates to claim 53.

Claim 54

The Appellants also argue that claim 54 recites "*wherein said electronic coupon is a token issued under the authority of an issuer for the benefit of said client.*" The Appellants then argue that Nichtberger does not appear to support the rejection.

1 A token is (according New Collegiate Dictionary, 1977) “. . . a piece
2 resembling a coin issued as money by some person or body other than a de
3 jure government. . . a piece resembling a coin issued for use (as for fare on a
4 bus) by a particular group on specified terms.” An electronic token would
5 serve an equivalent function.

6 Nichtberger indicates that the invention “can also be employed in
7 conjunction with coupons offering substantial discounts, amounting for
8 example, to several or many dollars. Such coupons may for example be
9 used to promote airline travel, car rental, reservations in a particular hotel,
10 etc. The invention can moreover be employed in conjunction with coupons
11 offering free goods and services” Nichtberger at 30:21-29. A coupon for the
12 full value of a service such as a flight or car rental is analogous to a token for
13 a bus ride, and as a consequence, we agree with the Examiner that claim 54
14 would have been obvious to one of ordinary skill in the art at the time the
15 invention was made.

16 The rejection is affirmed in regard to claim 54.

17 *Claim 55*

18 The Appellants’ argument as regards this claim is that the “rejection
19 of claim 55 is still improper for at least the stated deficiencies of the
20 Nichtberger/Valencia combination presented above with regard to
21 independent claim 47.” App. Br. at 22-23. As this is not separate argument
22 (37 CFR §41.37(c)(i)(7)) as to the patentability of this claim, this rejection is
23 affirmed for the reasons given herein.

24 *Claim 56*

25 The Appellants urge that claim 56 recites the claim element of
26 “*wherein said electronic coupon includes data representative of the identity*

1 *of a location at which additional coupon information resides*". The
2 Appellants argue that Nichtberger does not disclose this element for
3 claim 56. (App. Br. at 23).

4 As noted above, the issue properly before us is not whether the
5 element was disclosed in one reference, but whether the claimed subject
6 matter would have been obvious in view of the combination of art cited,
7 when viewed with the knowledge of one of ordinary skill in the art.

8 We observe that the Examiner pointed to Nichtberger, column 30,
9 lines 24-30 in support of the finding that Nichtberger teaches this element.
10 (Ans. at 8). The Examiner's cited reference simply does not support this
11 finding. The cited portion of Nichtberger relates to coupons in general.

12 Accordingly, in view of the Appellants' assertion that this claim
13 element would not have been obvious, we reverse this rejection as it applies
14 to claim 56.

15 *Claims 58-59*

16 The Appellants present no new argument as regards these claims;
17 accordingly the rejection of these claims is affirmed for the reasons stated
18 herein.

19 *Claim 60*

20 The Appellants urge that claim 60 further recited the element of
21 "*. . . establishing a connection between said subsequent server and an*
22 *authentication server; said authentication server authenticating said*
23 *electronic coupon and authorizing the redemption of said electronic*
24 *coupon.*" (App. Br. at 24)

25 The Appellants contend that Nichtberger does not describe this
26 element of claim 60. (Id.).

1 The Examiner has pointed us to Nichtberger, Figure 4, and column
2 17, lines 49-60 along with column 11, lines 40-45. Turning to Figure 4, we
3 see block 16 (Central Processing Unit) is connected to block 82 (Credit
4 Merchant). In the description at column 17, we are informed that the “cash
5 register terminal (or local processor) compares the customer’s selections
6 with the products actually being purchased, as indicated at 64, and applies
7 credit accordingly, as indicated at 76. (Nichtberger 17:52-56). Column 11
8 as cited relates to the special card.

9 However, the Examiner has provided no explanation as to how this
10 description renders the *claimed subsequent authentication server*
11 *authenticating the coupon being redeemed* obvious. Accordingly, we
12 reverse this rejection as it applies to claim 60.

13 C. The Rejection of Claims 52 and 63 under 35 U.S.C. §103(a)
14 (i) Claims 52 and 63 stand rejected under 35 U.S.C. §103(a) as being
15 unpatentable over the combination of Nichtberger, Valencia, and Cameron.
16 (Ans. at 8).

17 More specifically, for claim 52, the Examiner has found that
18 Nichtberger and Valencia describe a system according to claim 47, including
19 a data network (which can be expansive, but does not expressly describe a
20 TCP/IP network). The Examiner has additionally found that Cameron
21 describes redeeming coupons over a network for remote areas utilizing a
22 TCP/IP network, and concluded it would have been obvious to use a TCP/IP
23 network. (Ans. at 8-9).

24 (ii) Findings of Fact

25 FF – C01. Claim 52 reads as follows:

52. A system according to claim 47 wherein said communications channel includes a TCP/IP based network and said coupon includes a data component.

FF-C02. Claim 63 reads as follows:

63. A system for distributing and redeeming electronic coupons over the Internet, comprising:

a first server system connected to a remote personal computer over the Internet, the first server system adapted for transmitting an electronic coupon to the remote personal computer over the Internet;

the remote personal computer including a computer processor and associated memory, the remote personal computer adapted for storing the electronic coupon in the memory; [and]

a second server system, separate from the first server system, adapted to establish a connection with the remote personal computer over the Internet, and for detecting the electronic coupon stored on the remote personal computer, the second server system further being adapted to redeem the electronic coupon. (Ans. at 46, Claims Appendix).

FF-C03. The Examiner has found that Nichtberger describes a system for distributing and redeeming electronic coupons. (Ans. at 4).

FF-C04. The Examiner has found that Nichtberger describes, at 19:34-39 and 22:1-9 that the coupon includes a data component. (Ans. at 8).

FF-C05. The Examiner has found that Nichtberger does not expressly describe that the network is TCP/IP based. (Ans. at 8).

1 FF-C06. The Examiner has found that Cameron describes redeeming
2 coupons over a network operating over remote areas using a TCI/IP network
3 (Cameron 5:13-16; 11:10-15). (Ans. at 8).

4 FF-C07. The Examiner concluded that it would have been obvious to
5 use a TCP/IP network because TCP/IP is known to be a standard and
6 effective protocol. (Ans. at 9).

7 (iii) The Arguments Presented for Review

8 *Claims 52 and 63*

9 The Appellants urge error in the rejection of Claim 52 in that (1) there
10 is no teaching, suggestion, or motivation to “further modify the already
11 improper combination of Nichtberger and Valencia to further include the
12 teachings of Cameron” (App. Br. at 24). The rationale for this argument is
13 that Cameron is directed to a computerized order entry system and is non-
14 analogous art to both Nichtberger and Valencia. (Id.).

15 We find these contentions unpersuasive. First, *KSR* expressly rejects
16 a requirement of a rigidly applied teaching, suggestion, or motivation test.
17 Second, the Appellants have provided no argument relating the references to
18 the standards for finding a reference to be analogous.

19 In making a determination whether art is analogous to the invention,
20 we must consider two criteria. First, it must be determined if the prior art is
21 from the same field of endeavor, regardless of the problem addressed.
22 Secondly, even if the prior art is not in the same field of endeavor, it must be
23 determined whether the reference still is reasonably pertinent to the
24 particular problem with which the inventor is involved. See *In re Clay*, 966
25 F.2d 656, 658-659 (Fed. Cir. 1992).

1 On their face, Nichtberger and Valencia are analogous and related.
2 Indeed, Valencia (2:15-34) references Nichtberger. Cameron relates to a
3 computerized order entry system. The Appellants have provided no
4 persuasive reasoning why these are not reasonably pertinent to the particular
5 problem with which the inventor is concerned, or are not the same field of
6 endeavor. It is clear that the Appellants know how to argue the issue as they
7 have done it elsewhere in the same brief. (App. Br. at 27-30). This
8 argument fails for that reason alone.

9 Third, it is evident that Cameron is in the same field of endeavor, as it
10 pertains to electronic commerce and the redemption of coupons (See, e.g.
11 Fig. 15, reference number 124.).

12 The remaining argument for these claims is that Cameron fails to cure
13 the deficiencies of Nichtberger and Valencia as they relate to claims 47
14 and 57. Again, this is not separate argument for patentability.

15 D. The Rejection of Claims 47-63 under 35 U.S.C. §103(a)

16 (i) Claims 47-63 stand rejected under 35 U.S.C. §103(a) as being
17 unpatentable over the combination of Von Kohorn and Saigh. (Ans. at 9).

18 More specifically, the Examiner has found that Von Kohorn describes
19 all of the elements of claim 47, except that Von Kohorn does not describe
20 that the electronic coupon is electronically redeemed by the central station.
21 (Ans. at 10). The Examiner concluded that it would have been obvious to
22 electronically redeem coupons for the added convenience. (Id.).

23 The Examiner also concluded that Von Kohorn did not describe the
24 communications channel as being the Internet. The Examiner found that
25 Saigh describes the Internet for disseminating information and transmitting
26 coupons. (Ans. at 11). The Examiner concluded that it would have been

obvious to use the Internet as a readily available network for transmitting information. (Id).

(ii) Findings of Fact

FF-D01 Claim 47 reads as follows:

47. A system for distributing and redeeming electronic coupons comprising:

a first server system including a computer processor and associated memory, said first server system being connected by a communications channel to a client system, said first server system being adapted for transmitting an electronic coupon to said client system over said communications channel;

said client system including a computer processor and associated memory, said client system being adapted for storing said electronic coupon in said memory;

a second server system connected to said communications channel, said second server system being adapted to establish a connection with said client system and for detecting said electronic coupon stored on said client system, said second server system further being adapted to redeem said electronic coupon. (bolding added)(App. Br. at 40, Claims Appendix).

FF-D02. Claim 53 reads as follows:

53. A system according to claim 47, wherein said first server system and said second server system are the same system. (Id.)

(iii) The Arguments Presented For Review

The References Fail to Disclose The Claimed Subject Matter

The Appellants urge that Von Kohorn and Saigh fail to disclose, teach, or suggest all of the elements of claims 47-63.

The first assertion of error is that Von Kohorn fails to “teach the claim element of a second (or subsequent) server being adapted to redeem an electronic coupon” (App. Br. at 32), The Appellants in particular point to

1 the recitation at columns 87 and 88 of Von Kohorn as not describing the
2 redemption of a coupon by a second or subsequent server.

3 The Examiner has found that Von Kohorn describes redemption
4 information transmitted electronically – that is, an identification of symbols
5 to validate those which appear printed out on a paper coupon. We note that
6 this is not the same thing as electronically *storing* or *redeeming* the coupon
7 on a client system, as required by the claims.

8 Von Kohorn essentially teaches printing out a coupon from a user
9 station and taking it to a redemption station to be verified or redeemed by
10 another server by transmitting certain symbols indicative of validity to the
11 redemption station. (40:10-15).

12 In the Examiner's answer, page 26, the conclusion is reached "it
13 would have been obvious to one having ordinary skill in the art at the time
14 the invention was made to add Von Kohorn electronic transfer of redemption
15 information for redemption to Von Kohorn's operator of a service that can
16 redeem incentives. One would have been motivated to do this in order to
17 allow Von Kohorn's users convenient incentive redemption."

18 We find that the reason stated for modifying Von Kohorn (to allow
19 convenient coupon redemption) is, in this specific instance, insufficient.
20 Von Kohorn is not motivated by convenient redemption for the user – rather,
21 Von Kohorn is motivated by collection of data on the behavior of its users.
22 Electronic issuance and redemption of the coupon of Von Kohorn would act
23 to frustrate portions of Von Kohorn's invention, the dispensing and
24 redemption of product-specific tokens, for example. Von Kohorn's principal
25 thrust is to gather information electronically about the habits of consumers
26 between the decision to purchase and the actual purchase.

Figure 28 is illustrative – an immediate paper reward, carrying advertising, is given to a user. Figures 29 and 30 specifically require a user to carry (924) a record of the transaction, a card, from the station (206C) where the coupon was generated to a redemption and authentication facility 906. This would enable a player to receive a prize for a winning wager. In other words, part of Von Kohorn's invention appears to be in the immediate sensation of a physical reward to a user.

The stated reason appears to us to be solely based upon impermissible hindsight. Accordingly, we reverse this rejection.

THE REQUESTED INTERFERENCE AND REEXAMINATION

We observe that the Appellants state that they have requested an interference with Patent 6,076,069 to Laor (App. Br. at 38) and seem to be implying that the Office should reexamine Patent 6,076,069. An appeal is not the proper forum for either form of relief.

CONCLUSION OF LAW

On the record before us, the Appellants have shown error on the part of the Examiner as to the rejection of claims 56 and 60 as being unpatentable over the combination of Nichtberger and Valencia.

The Appellants have also shown error in the rejection of Claims 47-63 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Von Kohorn and Saigh.

The Appellants have not otherwise shown prejudicial error.

DECISION

The rejection of Claims 52 and 58 under 35 U.S.C. § 112, first paragraph is AFFIRMED.

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The rejection of Claims 47-51 and 53-55 and 57-59 under 35 U.S.C. §103(a) as being unpatentable over the combination of Nichtberger and Valencia is AFFIRMED.

The rejection of Claims 56 and 60 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nichtberger and Valencia is REVERSED.

The rejection of Claims 47-63 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Von Kohorn and Saigh is REVERSED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (1) (iv) (2006).

AFFIRMED-IN-PART

rvb

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